THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.23233 of 2002

ORAL ORDER:

This writ petition is filed seeking a Mandamus declaring the proceedings of the first respondent dated 31.8.2002 as confirmed by the proceedings of the second respondent dated 13.11.2002, whereunder the petitioner was dismissed from service in pursuance of the charge sheet dated 24.7.2000, as arbitrary, illegal, unconstitutional and consequently direct the respondents to reinstate the petitioner into service with back wages and all other benefits.

It appears, petitioner was appointed as Gardener on daily wage basis with effect from 8.12.1992 in the first respondent organization. While that being so, he was placed under suspension from 2.5.2000 and issued with a charge sheet dated 24.7.2000, wherein it was alleged that the petitioner had committed theft of (8) numbers of PVC chairs and (3) numbers of ceiling fans on 2.5.2000 of VDLB Kalyana Mandapam. Petitioner was arrested by the Police and was remanded to judicial custody on 10.5.2000. Petitioner denied the charges and requested for an enquiry to be conducted. Vide proceedings dated 10.10.2001, the first respondent appointed an Enquiry Officer for conducting an enquiry into the charges levelled against the petitioner.

A criminal case was registered by the Police in C.C.No.213 of 2000 in respect of the very same allegations i.e. committing theft of (8) Nos. of PVC chairs and (3) Nos. of ceiling fans of VDLB Kalyanamandapam, which was tried by the VII Metropolitan Magistrate, Visakhapatnam and the same was ended in acquittal on 13.12.2001. However, the domestic enquiry was proceeded against the petitioner and two witnesses i.e. D.Srinivas Rao and Narayana Murthy, Contractor were examined. According to the petitioner, these two witnesses were also examined in the criminal case and the charge before the Criminal Court as well as in the departmental

proceedings is one and the same. Once the Criminal Court found him not guilty of the charge, basing on the very same evidence of P.Ws.1 and 2 in the domestic enquiry, petitioner could not have been held guilty of the charge.

The learned counsel for petitioner strenuously contended that admittedly the witnesses examined before the Criminal Court as well as in the domestic enquiry are one and the same. The first witness D.Srinivas Rao deposed that on being called, he went to V Town Police Station, where he found that the petitioner was arrested by the Police and beyond this, he has no personal knowledge about the missing of PVC chairs and ceiling fans. P.W.2 also stated that he was informed about theft of (8) numbers of PVC chairs and (3) numbers of ceiling fans, therefore, he lodged complaint before the Police, thereafter, police have investigated into the matter. Thus, there is no evidence recorded by the enquiry officer to hold that the petitioner is guilty of the charge. The charge in the domestic enquiry as well as in the criminal case is one and the same. Once the petitioner is acquitted of the criminal case, the departmental enquiry could not have been conducted and even if it is conducted, absolutely there is no evidence to hold the petitioner is guilty of the charge. Therefore, the impugned order passed by the first respondent, which was confirmed by the second respondent is liable to be set aside.

Whereas, the learned counsel for respondents stated that, may be, the petitioner was acquitted in the criminal case, but that does not mean that he cannot be proceeded with departmentally. In this case, petitioner was proceeded against departmentally and on the basis of evidence, he was found guilty of the charge, therefore, vide impugned order he was removed from service, which was also confirmed by the appellate authority. No illegality has been committed by the disciplinary authority or the appellate authority calling for interference of this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions

made by the learned counsel on either side and perused the impugned orders and other material made available on record.

At the outset, it may be necessary to notice the charges framed against the petitioner, which are as under:

> "That the said Shri V.Jayanthi Rao, while functioning as Casual Gardener, Shram Shakti Vihar, DLB Housing Colony, Kailasapuram, committed theft of 8 Nos. of PVC chairs and 3 Nos. of ceiling fans on 2.5.2000 of VDLB Kalyanamandapam. The Police arrested Shri V.Jayanthi Rao for the above offence and remanded to judicial custody on 10.5.2000 and recovered the stolen property of Dock Labour Board".

This very charge was also made in the criminal case. Admittedly, the witnesses examined in the domestic enquiry as well as in the criminal case are one and the same and in the criminal case, petitioner was acquitted. The charge in the domestic enquiry is also akin to that of the criminal charge and absolutely there was no evidence to show that the petitioner has committed theft of 8 Nos. of PVC chairs and 3 Nos. of ceiling fans. Even the evidence of P.Ws.1 and 2 does not help to hold the petitioner guilty of the charge. P.W.1 stated that on being informed about missing of furniture, he went to V Town Police Station, where he found that the petitioner was arrested by the Police and beyond this, he has no personal knowledge about the missing of PVC chairs and ceiling fans. P.W.2 also stated that he was informed about theft of (8) numbers of PVC chairs and (3) numbers of ceiling fans, therefore, he lodged complaint before the Police and thereafter, police have investigated into the matter**.** From the evidence of these two witnesses, one cannot reach to a just conclusion that the petitioner has committed theft and, therefore, he is guilty of the charge. The findings recorded by the disciplinary authority as confirmed by the appellate authority are contrary to the evidence on record. As noticed above, the petitioner was acquitted in the criminal case for the identical charge of theft. Under those circumstances, I am of the opinion that the order passed by the first respondent dated 31.8.2002 as confirmed by the second respondent

vide order dated 13.11.2002 are liable to be set aside.

In the result, the writ petition is allowed and the impugned orders are set aside. The respondents are directed to reinstate the petitioner with continuity of service and attendant benefits. The service between the date of termination till the date of reinstatement shall be counted for the purpose of seniority etc. However, in the facts and circumstances of the case, I deem it appropriate to deny the back wages. No order as to costs.

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C.V.RAMULU, J

Date: 14.6.2007

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.23233 of 2002

14.6.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.23233 of 2002

Date: 14th June, 2007

Between:

V.Jayanthi Rao

.. Petitioner

And

Visakhapatnam Dock Labour Board,
represented by its Chairman,
Visakhapatnam & another.

.. Respondents